

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JACK REESE, FRANCES ELAINE
PIDDE, JAMES CICHANOFSKY,
ROGER MILLER, and GEORGE
NOWLIN,

Plaintiffs,

v.

CNH GLOBAL N.V. and CNH
AMERICA LLC,

Defendants.

Case 2:04-cv-70592-PJD-PJK

Hon. Patrick J. Duggan, U.S.D.J.

Hon. Paul J. Komives, U.S. Mag. J.

**CNH'S EMERGENCY MOTION FOR
CLARIFICATION THAT PLAINTIFFS' REBUTTAL EXPERT
DISCLOSURES ARE DUE DECEMBER 16, 2013**

CNH Global N.V. and CNH America LLC (referred to collectively as "CNH") request clarification of the October 31, 2013, revised scheduling order to state that Plaintiffs must serve their rebuttal expert disclosures on or before December 16, 2013. This clarification is necessary to preserve CNH's opportunity to depose the experts after any rebuttal disclosures and before the January 21, 2014, discovery deadline; and it is the exact date Plaintiffs requested in their motion to extend the prior schedule.

In light of the approaching deadline, CNH requests expedited consideration of its motion and suggests a briefing schedule as follows: Plaintiffs' response

within three business days of the service of the motion, and CNH's reply within two business days of the service of Plaintiffs' response. CNH has submitted a proposed order regarding the shortening of the briefing schedule using the Court's CM/ECF system.

Pursuant to Local Rule 7.1(a), counsel for CNH requested the consent of counsel for Plaintiffs by letter on November 12, 2013, and by telephone on November 22, 2013, regarding this motion. Plaintiffs did not consent.

Dated: November 26, 2013

Respectfully submitted,

Norman C. Ankers (P30533)
(nankers@honigman.com)
Honigman Miller Schwartz and Cohn
LLP
2290 First National Building
660 Woodward Avenue
Detroit, Michigan 48226
313.465.7306
313.465.7307 fax

s/Bobby R. Burchfield
Bobby R. Burchfield
(bburchfield@mwe.com)
Joshua David Rogaczewski
(jrogaczewski@mwe.com)
Laura J. Capotosto
(lcapotosto@mwe.com)
McDermott Will & Emery LLP
The McDermott Building
500 North Capitol Street, Northwest
Washington, D.C. 20001
202.756.8000
202.756.8087 fax

Attorneys for CNH Global N.V. and CNH America LLC

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**CNH'S BRIEF IN SUPPORT OF ITS EMERGENCY MOTION FOR
CLARIFICATION THAT PLAINTIFFS' REBUTTAL EXPERT
DISCLOSURES ARE DUE DECEMBER 16, 2013**

Norman C. Ankers (P30533)
(nankers@honigman.com)
Honigman Miller Schwartz and Cohn
LLP
2290 First National Building
660 Woodward Avenue
Detroit, Michigan 48226
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(bburchfield@mwe.com)
Joshua David Rogaczewski
(jrogaczewski@mwe.com)
Laura J. Capotosto
(lcapotosto@mwe.com)
McDermott Will & Emery LLP
The McDermott Building
500 North Capitol Street, Northwest
Washington, D.C. 20001
202.756.8000
202.756.8087 fax

Attorneys for CNH Global N.V. and CNH America LLC

CONCISE STATEMENT OF THE ISSUE PRESENTED

Is the deadline for Plaintiffs' rebuttal expert reports December 16, 2013, approximately thirty days before the end of discovery?

**CONTROLLING OR
MOST APPROPRIATE AUTHORITY FOR THE RELIEF SOUGHT**

The Court's inherent power to clarify its orders

In their most recent motion to extend the scheduling order, Plaintiffs requested a ninety-day extension of the discovery deadline, and an extension of the date for their rebuttal expert reports to “December 16, 2013.” (R. 370, Pls.’ Mot. Ext. Sched. vii.) On October 31, the Court ruled: “[T]he deadlines set forth above that have not passed are extended by SIXTY (60) DAYS.” (R. 372, Op. & Order 2.) The Court did not specifically address the rebuttal expert deadline, but plainly extended the discovery deadline to January 21, 2014. In order to preserve CNH’s right under Federal Rule of Civil Procedure 26(b)(4)(A) to take the depositions of Plaintiffs’ experts prior to the January 21 discovery deadline, CNH respectfully requests clarification that the rebuttal reports are due no later than December 16, just as Plaintiffs requested.

Notwithstanding several requests from CNH, Plaintiffs have refused to commit to a date—any date—by which they will submit the rebuttal reports. They have suggested that the rebuttal reports will not be provided until they receive all the discovery they have sought from CNH as well as from nonparties, even though the magistrate’s order granting Plaintiffs the opportunity for rebuttal expert reports did not make the rebuttal expert reports contingent on anything other than Plaintiffs’ receipt of CNH’s expert reports. (*See* R. 369, Order 8, 9 (“[P]laintiffs’ shall have thirty (30) days from receipt of defendants’ expert report(s) within which to file a rebuttal expert report.”).) CNH served its expert reports on

October 17, 2013, as required under the schedule (and provided Plaintiffs with electronic courtesy copies).

Further, Plaintiffs have received sufficient information for preparation of the rebuttal reports. Weeks ago, CNH committed to produce all documents relied on by its experts in their reports and produced nearly all such material. (The sole exception is a third-party database for which the parties are negotiating an appropriate protective order. CNH is confident that Plaintiffs will receive the material well in advance of December 16.) Plaintiffs are purportedly awaiting only wholly irrelevant information regarding compensation and benefits available to CNH's most senior executives, as well as data not relied upon by CNH's experts.

For the reasons set forth above, CNH requests that the Court clarify that the deadline for serving rebuttal expert reports is December 16, 2013, as Plaintiffs requested in their motion to extend the schedule. CNH has submitted a proposed order for this relief using the Court's CM/ECF system.

Dated: November 26, 2013

Respectfully submitted,

Norman C. Ankers (P30533)
(nankers@honigman.com)
Honigman Miller Schwartz and Cohn
LLP
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660 Woodward Avenue
Detroit, Michigan 48226
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McDermott Will & Emery LLP
The McDermott Building
500 North Capitol Street, Northwest
Washington, D.C. 20001
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202.756.8087 fax

Attorneys for CNH Global N.V. and CNH America LLC

CERTIFICATE OF SERVICE

I hereby certify that on November 26, 2013, I electronically filed the foregoing **CNH's Emergency Motion for Clarification That Plaintiffs' Rebuttal Expert Disclosures Are Due December 16, 2013**, with the Clerk of the Court using the ECF system which will send notification of such filing to all ECF participants.

s/Joshua David Rogaczewski
Joshua David Rogaczewski
(jrogaczewski@mwe.com)
McDermott Will & Emery LLP
The McDermott Building
500 North Capitol Street, Northwest
Washington, D.C. 20001
202.756.8195
202.591.2757 fax